

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DEVON MICHAEL BAY,

Plaintiff,

vs.

No. CIV 25-0359 JB/GJF

JOSHUA SANCHEZ and DIEGO TRUJILLO,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion to Dismiss, filed April 15, 2025 (Doc. 6)("Motion"). Plaintiff Devon Michael Bay initiates this case on April 14, 2025, by filing a complaint. See Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 at 1, filed April 14, 2025 (Doc. 1)("Complaint"). On the same date, Bay pays the \$405.00 filing fee. See Filing fee: \$405.00, receipt number 1007213, entered April 14, 2025 (Doc. 2). Bay alleges that Defendants Joshua Sanchez and Diego Trujillo violate his Constitutional rights. See Complaint at 1-4.

In his Motion, Bay states that he dismisses this matter and requests a refund of the civil filing fee. See Motion at 1. Bay seeks to dismiss voluntarily this case pursuant to rule 41 of the Federal Rules of Civil Procedure, which permits plaintiffs to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Where the rule applies, the right to dismiss without prejudice is absolute. See Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003)(stating that rule 41(a)(1) grants "an absolute right to dismiss without prejudice"). Sanchez and Trujillo do not enter an appearance or file an answer or other responsive pleading. Accordingly, the Court grants the request in the

Motion and dismisses this case without prejudice to refiling.

As to Bay's request for a filing-fee refund, no authority permits a refund under Bay's circumstances. See Wiggins v. Hatch, No. CIV 21-0670 KWR/KBM, 2023 WL 2354730, at *3-4 (D.N.M. March 3, 2023)(Riggs, J.)(declining to refund filing fee made in duplicate case); Mackin v. Om Sai Corp., CIV 21-1052 JFR/KRS, 2021 WL 5937589, at *1 (D.N.M. December 16, 2021)(Robbenhaar, M.J.)(declining to refund filing fees made in ten duplicate cases). These cases note that the Administrative Office of the United States Courts' Guide to Judiciary Policy, Chapter 6, states:

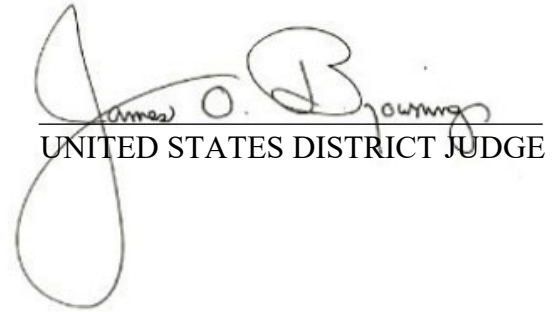
§ 650.10 Applicability

The Judicial Conference's current policy on refunding filing fees, in effect since 1949, has been broadly interpreted to generally prohibit refunds of fees due upon filing, even if a party filed the case in error or the court dismissed the case or proceeding.

Guide to Judiciary Policy, Vol. 4, Ch. 6, § 650.10, https://jnet.ao.dcn/policy-guidance/guide-judiciary-policy/volume-4-court-and-case-administration/ch-6-fees#650_10 (last visited April 17, 2025). The Guide is persuasive authority, as it codifies the policies that the Administrative Office's Director promulgates which are "approved by the Judicial Conference of the United States." In re Sony BMG Music Entm't, 564 F.3d 1, 7 (1st Cir. 2009)("In re Sony"). See Kitzmiller v. Dover Area Sch. Dist., 388 F. Supp. 2d 484, 486-87 (M.D. Pa. 2005)("Kitzmiller"). The Guide is the "official medium by which direction as to courtroom procedures and other information are provided to the Federal Judiciary in support of its day-to-day operations." In re Sony, 564 F.3d at 7 (quoting Kitzmiller, 388 F. Supp. at 486-87). The Court, therefore, declines to refund Bay's filing fee in this case.

IT IS ORDERED that: (i) the Court grants in part and denies in part the Plaintiff's Motion to Dismiss, filed April 15, 2025 (Doc. 6); (ii) the Plaintiff's Civil Rights Complaint Pursuant to 42

U.S.C. § 1983, filed April 14, 2025 (Doc. 1), is dismissed without prejudice; (ii) this case is dismissed without prejudice; (iii) Plaintiff Devon Michael Bay's filing fee is not refunded; and (iv) the Court will enter a separate Final Judgment disposing of this case.



UNITED STATES DISTRICT JUDGE

Parties:

Devon Michael Bay
Albuquerque, New Mexico

Plaintiff pro se